

APPEAL NO. 040865
FILED JUNE 3, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on March 22, 2004. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury and did not have disability; and that the respondent (carrier) is not relieved from liability under Section 409.002 because the claimant timely notified his employer of his alleged injury pursuant to Section 409.001. In his appeal, the claimant argues that the hearing officer's injury and disability determinations are against the great weight of the evidence. In its response to the claimant's appeal, the carrier urges affirmance. The hearing officer's determination that the carrier is not relieved of liability pursuant to Section 409.002 was not appealed and has become final. Section 410.169.

DECISION

Affirmed.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on _____. The claimant had the burden of proof on that issue. Johnson v. Employers Reinsurance Corp., 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The injury issue presented a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the relevance and materiality of the evidence and of its weight and credibility. Section 410.165(a). The hearing officer resolves the conflicts and inconsistencies in the evidence and decides what facts the evidence has established. Texas Employers Ins. Ass'n. v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ). When reviewing a hearing officer's decision we will reverse such decision only if it is so contrary to the overwhelming weight of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Co., 715 S.W.2d 629 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175 (Tex. 1986).

In this instance, there was conflicting evidence presented on the disputed issue. The hearing officer determined that the evidence did not establish that the claimant sustained a compensable injury. He found that the claimant simply was not persuasive in his claim and failed to prove that he sustained a compensable low back injury on _____. The hearing officer was acting within his province as the fact finder in so finding. Nothing in our review of the record demonstrates that the challenged determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust; therefore, no sound basis exists for us to reverse the injury determination on appeal. Pool, *supra*; Cain, *supra*.

The 1989 Act requires the existence of a compensable injury as a prerequisite to a finding of disability. Section 401.011(16). Because we have affirmed the hearing

officer's determination that the claimant did not sustain a compensable injury, we likewise affirm the determination that he did not have disability.

The hearing officer's decision and order are affirmed.

The true corporate name of the insurance carrier is **CLARENDON NATIONAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**UNITED STATES CORPORATION COMPANY
800 BRAZOS
AUSTIN, TEXAS 78701.**

Elaine M. Chaney
Appeals Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Chris Cowan
Appeals Judge